IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 1588 of 2003(C)

ST.180/2002 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONERS: ACCUSED 1 TO 5

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1. V.RAMASWAMY, S/O.VELAYUDHAN ACHARI, T.C. 20/914, KARAMANA, THIRUVANANTHAPURAM.

2. V.SREENIVASAN, S/O.VELAYUDHAN ACHARI, T.C. 20/914, KARAMANA, THIRUVANANTHAPURAM.

3. R.KESAVAN, T.C. 20/928, KARAMANA, THIRUVANANTHAPURAM.

4. R.CHANDRAN, T.C. 20/928, KARAMANA, THIRUVANANTHAPURAM.

5. MRS.C.RATINAM, W/O.RAJAGOPALAN ACHARI, T.C 20/914, KARAMANA, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENT: COMPLAINANT

OFFICIAL RECEIVER, THIRUVANANTHAPURAM DISTRICT COURT, DISTRICT COURT BUILDING, VANCHIYOOR, THIRUVANANTHAPURAM.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NOS.10054/2003 & 7193/2004 IN CRL.M.C.NO.1588/2003

DISMISSED

2-12-2007. SD/= A.K. BASHEER, JUDGE.

/TRUE COPY/

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A.K. BASHEER, J.

CRL.M.C.NO.1588 OF 2003

Dated this the 2nd day of December, 2007.

O R D E R

Having heard learned counsel for the petitioners and having perused the materials placed on record, I am of the view that this petition filed under Section 482 of the Code of Criminal Procedure need not be retained on the file of this Court any more. The petitioners have contended that the respondent/Official Receiver had no authority under the Insolvency Act to launch prosecution against them alleging commission of an offence punishable under Section 175 read with Section 34 of I.P.C.

2. The respondent has not appeared before this Court though notice has been served on her. A perusal of the complaint and the other documents placed on record undoubtedly shows that several aspects of the issue based on facts and having a bearing on the allegations in Annexure A1 complaint may have to be kept in view while deciding the question of maintainability of the complaint. The insolvency proceedings are admittedly pending before the 1st Additional District Court, Trivandrum, in which, the Official Liquidator has been appointed. I do not propose to make any

further observation on the merit of the contentions raised by the petitioners in view of that I propose to pass.

3. In my view, the petitioners have to be relegated to the trial court with liberty to urge all their contentions before the learned magistrate. Ordered accordingly. It is made clear that, I have not considered the merit of any of the contentions raised by the petitioners. The learned magistrate shall consider the question of maintainability of Annexure A1complaint as a preliminary issue after affording an opportunity to the petitioners and the complainant.

4. Having regard to the peculiar facts and circumstances, personal appearance of the petitioners shall be dispensed with for the time being, if a motion in this regard is made.

5. The learned magistrate shall pass orders on the preliminary issue as early as possible, at any rate, within two months from the date of receipt of a copy of this order. The petitioners shall appear before the court below on December 19, 2007.

The Crl.M.C is disposed of in the above terms.

A.K. BASHEER, JUDGE.

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A.K. BASHEER, J.

CRL.M.C.NO.1588 OF 2003

O R D E R

2nd day of December, 2007.